



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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OCT 17 2018

Ref: 8EPR-IO

Brian Lorch
Director, Summit County Open Space and Trails
P.O. Box 5660
Frisco, Colorado 80443

Anne Murphy
Open Space & Trails Manager, Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

Re: Mountain Pride Mine Comfort/Status Letter

Dear Mr. Lorch and Ms. Murphy:

I am writing in response to your inquiry on behalf of Summit County and the Town of Breckenridge, dated July 2, 2018, to the U.S. Environmental Protection Agency, (EPA) concerning the Mountain Pride claims, at the headwaters of Illinois Gulch (Property).¹ In your inquiry, you described the intentions of Summit County and the Town of Breckenridge to purchase the Property for open space and recreational use and requested a Superfund comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Property and potentially applicable federal Superfund statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with the purchase of the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA's mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency's priority to return lands to productive reuse. The EPA is issuing this letter consistent with the EPA's current guidance.

¹ The Mountain Pride Claims are located in Summit County, Colorado, in Section 10, T7S, R77W, of the 6th PM. The Mountain Pride Claims form a contiguous parcel comprised of the following patented mining claims: Waltham No. 1 MS #6735, Waltham No. 2 MS #6735, Williamsport MS #6735, Mountain Pride MS #6735, General Grant MS #6735, Lincoln MS #6735, and O.I.C. MS #6735. The size of the property is 32.46 acres.

Property Status

The following is a summary of the information the EPA currently has regarding the Property. The Property is located near the Illinois Gulch Site (Site) in Summit County, Colorado. Information about this Site is available in Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund. The Site is not on the National Priorities List (NPL).

The EPA conducted site assessment activities in and around Illinois Gulch including the Property. These activities are reported in a "Combined Assessment for Site Inspection/Removal Assessment" (Combined Assessment) published on March 20, 2017. As specified in the Combined Assessment, the Property contributes non-point source runoff to Illinois Gulch (during high flow and precipitation events), but is not a primary source of heavy metals loading to the stream.

Trout Unlimited, Inc. has completed a water quality restoration project at the Mountain Pride Mine site. The project was in part funded with Clean Water Act section 319 funding through the Colorado Department of Public Health and Environment. EPA Region 8 conducted oversight of the Trout Unlimited, Inc. work, as described in an August 23, 2018, letter from the EPA to Trout Unlimited, Inc. The goal of the project was to reduce nonpoint source pollution and metal loading to Illinois Gulch. The main channel of Illinois Gulch was routed around the mine site area and the associated mine waste pile was regraded. The regraded mine waste was covered with a lime, topsoil, and compost mix and was reseeded to prevent erosion.

Based upon available information, the EPA does not anticipate taking additional investigatory or cleanup action at this Property under the federal Superfund program unless new information warranting further Superfund consideration or conditions not previously known to the EPA regarding the Property are discovered.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

CERCLA was amended in 2002 to allow certain parties who purchased contaminated or potentially contaminated properties to buy such properties and to avoid potential CERCLA liability if they qualify as a "bona fide prospective purchaser" (BFPP). The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1) and who purchases after January 11, 2002, will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the purchaser is responsible for achieving and maintaining BFPP status.

To assist the purchaser and their legal counsel, the EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. See *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (Common Elements)* (Mar. 6, 2003) ("Common Elements Guidance"),

<http://www.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund>. CERCLA requires a party to perform “all appropriate inquiries” prior to acquiring real property. There are other BFPP requirements such as providing certain notices, taking “reasonable steps,” providing cooperation, assistance, and access, and complying with institutional controls. Please note that there are additional criteria addressed in CERCLA §§ 101(40) and 107(r)(1) that a landowner must meet in order to qualify as a BFPP under CERCLA. You and your legal counsel will need to assess whether you satisfy each of the statutory requirements necessary to achieve BFPP status and continue to meet the applicable criteria.

Among other criteria outlined in the Common Elements Guidance, a BFPP must take “reasonable steps” related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases as required by CERCLA § 101(40)(D). You have asked what actions would constitute reasonable steps by the owner of the Property.

As noted above, Trout Unlimited implemented the Illinois Gulch Mountain Pride Mine Site Restoration Project at the Property. Based on the information the EPA has evaluated to date, the EPA believes that the following would be appropriate reasonable steps related to the hazardous substance contamination found at the Site:

- Maintain the integrity of the mine waste cover to minimize site erosion.
- Ensure adequate vegetation becomes established on the waste pile cover and re-vegetate as needed.
- Limit the use of the site to non-intrusive recreational use that does not impact project components.
- Evaluate the performance of the new stream channel around the mine waste area to ensure channel degradation does not occur. Repairs to the channel should be made as needed.

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination known to the EPA at this time and are provided solely for informational purposes. If additional information regarding the nature and extent of hazardous substance contamination at the Property becomes available, additional actions may be necessary to satisfy the “reasonable steps” criterion. You should ensure that Summit County and the Town of Breckenridge are aware of the condition of the Property so that the town and county are able to take reasonable steps with respect to any hazardous substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

State Actions

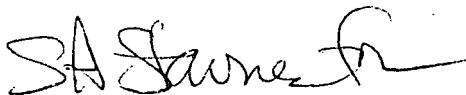
The EPA is only providing you with information regarding the EPA’s Superfund actions at the Site and federal law and guidance. You should contact the Colorado Department of Public Health and Environment for more information about potential state actions and liability issues.

Conclusion

The EPA generally issues Superfund comfort/status letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort/status letter is intended to help Summit County and the Town of Breckenridge make informed decisions by providing you with the Superfund information that the EPA has about the Property and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Property.

This letter is not intended to limit or affect the EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability. The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse potentially contaminated property. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, local, and/or tribal laws or requirements that may apply. If you have any additional questions or wish to discuss this information further, please feel free to contact Douglas Naftz, Enforcement Attorney, EPA Region 8, Naftz.Douglas@epa.gov; (303) 312-6942.

Sincerely,



Betsy Smidinger
Assistant Regional Administrator
Ecosystems Protection
and Remediation

cc: Douglas Naftz, Enforcement Attorney, U.S. EPA Region 8
Andrea Madigan, Supervisory Attorney, U.S. EPA Region 8
Jean Wyatt, Site Assessment Project Manager, U.S. EPA Region 8
Laura Williams, Unit Leader, Emergency Response and
Preparedness Program, U.S. EPA Region 8